



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/163873

PRELIMINARY RECITALS

Pursuant to a petition filed February 11, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on March 03, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the petitioner's 2015 appeal of a 2012 tax intercept notice is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Kathy Jones

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On January 12, 2011 the agency sent the petitioner a Notification of FoodShare Overissuance, claim number [REDACTED], asserting a \$7,121.00 overpayment from May 1, 2009 through April 30, 2010.

3. On February 7, 2011 the agency sent the petitioner a repayment agreement.
4. On March 2, 2011 the agency sent the petitioner another repayment agreement.
5. On May 3, 2011 the agency sent the petitioner another repayment agreement.
6. On May 3, 2011 the agency sent the petitioner a dunning notice reminding him about the overpayment that he still owed.
7. On June 2, 2011 the agency sent the petitioner another dunning notice reminding him about the overpayment that he still owed.
8. On November 2, 2011 the agency sent the petitioner another dunning notice reminding him about the overpayment that he still owed.
9. On November 2, 2011 the agency sent the petitioner another repayment agreement.
10. On February 2, 2012 the agency sent the petitioner another repayment agreement.
11. On February 17, 2012 the agency sent the petitioner notice indicating that it may intercept any tax refund to which he might be entitled to satisfy the \$5,370.00 balance of the \$7,121.00 overpayment of FoodShare benefits from May 1, 2009 through April 30, 2010 for claim number [REDACTED], and the \$2,000.00 balance for overpayment of FoodShare benefits from June 1, 2010 through July 31, 2010 for claim number [REDACTED].
12. On February 11, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook*, §7.3.1.8. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types
Federal: All error types.
3. State: At least \$20;
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of FS, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**

Emphasis added

A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11 In this case, the date of the notice was June 17, 2012, and division of hearings and appeals received the petitioner's request for fair hearing on February 11, 2015. This is well beyond the 30 day time limit for the petitioner to appeal. Thus, the Division of Hearings and Appeals does not have jurisdiction to decide whether or not the tax intercept was properly implemented.

CONCLUSIONS OF LAW

The petitioner's 2015 appeal of a 2012 tax intercept notice is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

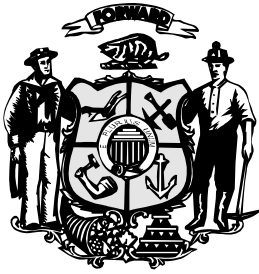
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of March, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 11, 2015.

Waukesha County Health and Human Services
Public Assistance Collection Unit